

Part 5

Burden of Proof

76-1-501 Presumption of innocence -- "Element of the offense" defined.

- (1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of this proof, the defendant shall be acquitted.
- (2) As used in this part, "element of the offense" means:
 - (a) the conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; and
 - (b) the culpable mental state required.
- (3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.

Amended by Chapter 40, 2014 General Session

Amended by Chapter 189, 2014 General Session

76-1-502 Negating defense by allegation or proof -- When not required.

Section 76-1-501 does not require negating a defense:

- (1) By allegation in an information, indictment, or other charge; or
- (2) By proof, unless:
 - (a) The defense is in issue in the case as a result of evidence presented at trial, either by the prosecution or the defense; or
 - (b) The defense is an affirmative defense, and the defendant has presented evidence of such affirmative defense.

Enacted by Chapter 196, 1973 General Session

76-1-503 Presumption of fact.

An evidentiary presumption established by this code or other penal statute has the following consequences:

- (1) When evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact;
- (2) In submitting the issue of the existence of a presumed fact to the jury, the court shall charge that while the presumed fact must on all evidence be proved beyond a reasonable doubt, the law regards the facts giving rise to the presumption as evidence of the presumed fact.

Enacted by Chapter 196, 1973 General Session

76-1-504 Affirmative defense presented by defendant.

Evidence of an affirmative defense as defined by this code or other statutes shall be presented by the defendant.

Enacted by Chapter 196, 1973 General Session